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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 173

AMALGAMATED CLOTHING WORKERS OF AMERICA and CLEVELAND JOINT BOARD OF THE AMALGAMATED CLOTHING WORKERS OF AMERICA,

Petitioners,

v.

THE RICHMAN BROTHERS COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONERS

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Opinions Below

The opinion of the Court of Appeals (R. 29-36) is reported at 211 F. 2nd 449. The findings of fact and conclusions of law of the District Court (R. 25-27) and the opinion of the District Court (R. 22-24) are not officially reported.

Jurisdiction

The judgment of the Court of Appeals was entered on March 30, 1954 (R. 28). The Petition for a Writ

of Certiorari was filed on June 28, 1954, and the writ was granted on October 14, 1954 (R. 36). The jurisdiction of this Court is based upon 28 U. S. C. 1254(1).

Question Presented

When an employer seeks to enjoin union conduct in a state court which lacks jurisdiction because the conduct complained of is subject to the exclusive jurisdiction of the National Labor Relations Board (*Garner* v. *Teamsters Union*, 346 U. S. 485), is a federal district court, on application of the union, powerless to enjoin the employer from further pursuing such action and attempting to obtain and enforce a state court injunction?

Statutes Involved

Sections 1337, 1651(a) and 2283 of the Judicial Code (28 U. S. C. 1337, 1651(a) and 2283), together with the relevant provisions of the National Labor Relations Act, as amended (29 U. S. C. 151 *et seq.*), are set forth in the Appendix, *infra*, pp. 43-49.

Statement

The Underlying Facts

Petitioners (hereinafter collectively referred to as "Amalgamated") are labor unions—the Amalgamated Clothing Workers of America and the Cleveland Joint Board, an affiliate of the Amalgamated composed of constituent locals of the Amalgamated in and about Cleveland, Ohio. Respondent, The Richman Brothers

Company (hereinafter referred to as "Richman") is an Ohio corporation, with its main office and place of business in Cleveland, which manufactures men's clothing in Ohio and Kentucky and sells such clothing at retail in its own outlets (R. 3, 17). Of these retail outlets, three are in Cleveland, 15 are in fourteen other cities in Ohio, and 51 are in thirty-one cities in fifteen other states of the United States (R. 3, 17). Respondent employs approximately 1500 manufacturing employees (R. 4, 17).[1]

The instant case arises out of Amalgamated's attempt to organize Richman's manufacturing employees (R. 17-18). As a part of this campaign, Amalgamated, beginning in 1951, sought to inform the consuming public of the fact that Richman's products were non-union. For this purpose, Amalgamated utilized the media of press, radio, meetings, sound-trucks and leaflets and also peacefully picketed Richman's retail outlets with signs generally bearing the following truthful and unprovocative legends (R. 7, 18):

> Richman Clothes are not union made. Buy union made clothing.
>
> Richman Clothes do not have a union label. Buy clothes which have a union label.

In October, 1952, Richman countered by instituting an action in the Ohio Court of Common Pleas for Cuyahoga County seeking an injunction restraining Amalgamated from picketing Richman's retail outlets in Ohio and in the fifteen other states in which

[1] On these facts, the union activities hereafter described have, as Richman has at no time disputed, a sufficient impact on interstate commerce to be subject to the Board's jurisdiction.

they are located (R. 1-10). It was the gist of Richman's petition that Amalgamated was "engaged . . . in carrying forward a conspiracy to cause economic pressure to be directed against plaintiff with the intention and for the purpose and objective of thereby causing plaintiff to force sufficient of its eligible employees to become members of defendant Amalgamated, so that defendant Amalgamated may become the representative of its such employees for the purpose of collective bargaining with plaintiff, regardless of the desires of a majority thereof" (R. 6). The petition was limited solely to a request for injunctive relief (R. 8-9, 10).

Amalgamated removed Richman's suit to the United States District Court for the Northern District of Ohio on the ground that Richman's state court action was, in reality, a controversy arising under the National Labor Relations Act, as amended (R. 25). On Richman's motion, the District Court remanded the case to the state court, holding that, even were it assumed that Richman's petition alleged an unfair labor practice within the meaning of the National Labor Relations Act, such a charge was outside the original jurisdiction of the District Court. *Richman Bros. Co. v. Amalgamated Clothing Wkrs.*, 114 F. Supp. 185, rehearing denied, 116 F. Supp. 800.

Petitioners' subsequent motion in the state court to dismiss Richman's action on the ground that it was within the exclusive purview of the National Labor Relations Board was denied (R. 15-16).

The Instant Proceeding

Thereafter, petitioners at once instituted the present proceeding in the federal District Court, asking that court to enjoin Richman from further prosecution of its state court action on the ground that Richman's petition complained of matters within the exclusive jurisdiction of the National Labor Relations Board and that the state court was therefore without jurisdiction (R. 16-21). More particularly, the complaint alleged that the activities in which Amalgamated was engaged were affirmatively protected by Section 7 of the National Labor Relations Act; but that if Amalgamated's activities had been for the purpose alleged by Richman . . 's state court petition such activities would have either been prohibited by Section 8 of the Act, or, if not prohibited, nevertheless within the area preempted by the Act and subject to the exclusive jurisdiction of the National Labor Relations Board, and hence beyond the jurisdiction of the state court (R. 19).

The District Court, first denying Amalgamated's application for a stay of the state court proceeding pending disposition of Amalgamated's prayer for a preliminary injunction (R. 24) and then denying the preliminary injunction (R. 27-28), held that it was prohibited from granting the requested injunctive relief by virtue of the provisions of Section 2283 of the Judicial Code, limiting the issuance by district courts of injunctions against state court proceedings (R. 22-24, 25-27). The District Court decided only one issue, the impact of Section 2283.

On appeal, the Court of Appeals for the Sixth Circuit affirmed (R. 28, 29-36). The appellate court like-

wise decided no issue other than that relating to Section 2283. It is the Court of Appeals' order of affirmance which is before this Court pursuant to its order granting certiorari (R. 36).

Throughout the appellate phases of this litigation, Amalgamated has been prohibited by a sweeping temporary injunction, still in effect, from picketing Richman's 69 retail outlets in all of the sixteen states in which they are located. This injunction was issued by the Cuyahoga County Court of Common Pleas following hearings initiated the very day the District Court denied Amalgamated's motion for a preliminary injunction. *Richman Bros. Co.* v. *Clothing Workers*, 51 Ohio Ops. 145.

Summary of Argument

A. The question presented by petitioners in the Petition for Certiorari and in this Brief assumes as its premise that the Ohio court was without jurisdiction of Richman's action under the rule announced in *Garner* v. *Teamsters Union*, 346 U. S. 485. This assumption is fully warranted.

Here, as in the *Garner* case, an employer sought a state court injunction against peaceful picketing allegedly designed to coerce the employer into forcing his employees to join the union (R. 6, 18). Here, as in *Garner*, the subject matter of the controversy fell exclusively within the area preempted by the National Labor Relations Act, the employer could have presented the controversy to the National Labor Relations Board, and hence the controversy "was not subject to litigation in the tribunals of the State" (346 U. S. at 501).

B. Section 1337 of the Judicial Code confers upon the several district courts jurisdiction over "any civil action or proceeding arising under any Act of Congress regulating commerce . . ." 28 U. S. C. 1337. The complaint initiating the instant proceeding alleged that respondent's state court action threatened rights secured to petitioners by the National Labor Relations Act, an act "regulating commerce". The jurisdiction of the District Court to hear the instant case and grant injunctive relief is confirmed by *A. F. of L.* v. *Watson*, 327 U. S. 582, and *Capital Service, Inc.* v. *Labor Board*, 347 U. S. 501, both of which expressly upheld district court jurisdiction over suits to enjoin state action jeopardizing rights arising under the National Labor Relations Act.

Whether the plaintiff is a federal instrumentality or a private party is irrelevant to the court's jurisdiction. The federal courts have taken jurisdiction of suits to enjoin state invasion of the area preempted by the National Labor Relations Act where such suits have been brought by the National Labor Relations Board, *Capital Service, Inc.* v. *Labor Board, supra; National Labor Rel. Bd.* v. *New York State Labor Rel. Bd.*, 106 F. Supp. 749 (S. D. N. Y.), and *National Labor Relations Board* v. *Industrial Com'n*, 84 F. Supp. 593 (D. Utah), affirmed 172 F. 2nd 389 (C. A. 10); by a union, *Food, Tobacco, Agricultural and Allied Wkrs.* v. *Smiley*, 164 F. 2nd 922 (C. A. 3), and *United Office and Professional Wkrs.* v. *Smiley*, 77 F. Supp. 659 (M. D. Pa.); by an employer, *Linde Air Products Co.* v. *Johnson*, 77 F. Supp. 656 (D. Minn.); and by unions, employees and employers together, *A. F. of L.* v. *Watson, supra*.

C. (1) To conclude, as is required by the opinion below, that district courts are prohibited from granting injunctions to restrain state court actions invading the field preempted by the National Labor Relations Act, would have "deplorable" consequences. Frank *J.*, in *International Union* v. *Underwood Corp.* (C. A. 2, No. 182, January 6, 1955) page 279 n. 14. The picketing here complained of gave rise to a controversy within the exclusive federal domain, where uniformity of interpretation and administration is essential. But the rule announced by the court below would make union activity subject to divergent and invalid restraints by state courts which, like the Cuyahoga County Court, could thus effectively assume judicial power over much of the nation. In the vast majority of cases, the lengthy *Garner* path through tiers of state courts, all without jurisdiction, to this Court, would be an illusory remedy; state court injunctions (which would have to be complied with notwithstanding the fact that they were "void", *United States* v. *Mine Workers*, 330 U. S. 258), would stand as insurmountable obstacles to union activity. In labor disputes, "the preliminary proceedings . . . make the issue of final relief a nullity." Frankfurter and Greene, *The Labor Injunction* (1930) 200. In the few cases where unions could survive years of litigation to gain "final relief" through this Court's ultimate intervention on certiorari, such final relief could not prevent obliteration, by improvident state court decrees, of the policies entrusted by Congress exclusively to the Board and the federal courts.

Section 2283 of the Judicial Code, relied on by the court below, is not a bar to the requested relief. Section 2283 is not a jurisdictional statute (*Smith* v.

Apple, 264 U. S. 274, 278-280; *Woodmen of the World* v. *O'Neill*, 266 U. S. 292, 298), but a flexible limitation on federal equity powers which is here inapplicable:

(2) Section 2283 is a rule of comity, the purpose of which is to promote "the harmonious concurrent activity of federal and state tribunals." Taylor and Willis, *The Power of Federal Courts to Enjoin Proceedings in State Courts*, 42 Yale L. J. 1169, 1196 (1933). As a rule of comity it is applicable only where both state and federal courts have "potential jurisdiction over the same subject-matter." *Hale* v. *Bimco Trading Co.*, 306 U. S. 375, 378. "Within that field it . . . is salutary," *Wells Fargo & Co.* v. *Taylor*, 254 U. S. 175, 183, but applying it where the state courts are without jurisdiction is to apply the statute beyond that field, and "to carry it beyond that field would materially hamper the federal courts in the discharge of duties otherwise plainly cast upon them by the Constitution and laws of Congress, which of course is not contemplated." *Ibid.*

This conclusion is squarely confirmed by *Bowles* v. *Willingham*, 321 U. S. 503, wherein the OPA Administrator was held entitled to a federal injunction against a state proceeding to enjoin issuance by the Administrator of certain rent orders. Noting that Congress had established an exclusive federal tribunal for challenging rent orders, the Court held that the state court lacked jurisdiction, and that, therefore, Section 265 (the more pervasive limitation on injunctions which preceded Section 2283) "does not come into play" (321 U. S. at 511). So here, where the controversy fell squarely within the field preempted by the National Labor Relations Act, the Ohio courts were wholly without jurisdiction and, accordingly, Section 2283 was inapplicable.

Nor did the adoption of the present version of this rule of comity, Section 2283, make the rule applicable to situations where federal jurisdiction is exclusive. The purpose of the revision was to make the statute even less restrictive of the federal court's exercise of its equity powers in the limited areas in which the statute could be applied. Specifically, the Reviser's Notes disclose that "the revised section restores the basic law as generally understood and interpreted prior to the [*Toucey* v. *New York Life Ins. Co.*, 314 U. S. 118] decision." H. Rep. No. 308, 80th Cong. 1st Sess., A181-A182.

(3) In addition, Section 2283 made it explicit that a federal court was empowered to grant injunctions against state court proceedings where "expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction . . .." Even if the statute were deemed to have general application to situations, such as the instant one, involving an invasion of an exclusive scheme of federal regulation, both the first and second express exceptions to Section 2283 remove this case from its prohibition.

The first exception cannot be construed literally. To do so would be to undermine implied "statutory qualifiations" of Section 265 which were recognized in *Toucey* and thereby to make Section 2283 even more sweeping a limitation on federal equity powers than was Section 265 as interpreted in *Toucey*. Plainly, however, the intent of the revisers was otherwise. The purpose of this first exception was to acknowledge the continued vitality as qualifications of Section 2283 of federal regulatory statutes which preclude competing state court actions. The National Labor Relations Act has been recognized as such a

statute; Moore's *Commentaries on the U. S. Judicial Code* (1949) 410. See Sections 10(a), (c), (f), (j) and (l) of the National Labor Relations Act (Appendix, *infra*, pp. 44–49).

Moreover, as to the second exception, the injunction which was requested from the Ohio court (and which did ultimately issue) would negate in advance any effective exercise of the jurisdiction conferred on the District Court by Section 10(j) of the National Labor Relations Act empowering the District Court to grant interim relief pending disposition of an unfair labor practice complaint before the Board. Accordingly, prior restraint of such a state court injunction was "necessary in aid of [the District Court's] jurisdiction."

This issuance of restraint "in aid of jurisdiction" was necessary even though there had not been a prior invocation of Board jurisdiction through the filing of charges and a resultant application for the exercise of federal judicial power under Section 10(j). Moreover, the jurisdiction which federal courts can protect consistently with Section 2283 comprehends the federal jurisdiction generally: that statute "does not prevent the federal courts from restraining interference by the state courts with jurisdiction vested exclusively in the federal courts . . . or in a federal agency." *National Labor Rel. Bd.* v. *New York State Labor Rel. Bd.*, 106 F. Supp. 749, 752 (S. D. N. Y. 1952).

(4) As the cases set forth in Section B, *supra*, show, one who sues to protect a private right from threatened invasion of the federal domain is no less entitled to complain and procure appropriate equitable relief than a governmental agency which sues to protect the

broad public interest. Nor does Section 2283 draw any distinction between injunctive suits against state court proceedings brought by private persons and similar suits brought by governmental agencies. Vindication of the jurisdiction of federal court and Board can be achieved upon the complaint of a union as well as upon the complaint of the federal Board.

ARGUMENT

A. The Court of Common Pleas Lacked Jurisdiction over Respondent's Petition because the Petition Alleged a Controversy within the Exclusive Domain fixed by the National Labor Relations Act.

The question presented by petitioners in the Petition for Certiorari and in this Brief assumes as its premise that the Court of Common Pleas for Cuyahoga County was without jurisdiction of respondent's action under the rule announced in *Garner* v. *Teamsters Union*, 346 U. S. 485.[2] Therefore, before turning to the question presented—the scope of district court power to enjoin the Ohio court's usurpation of

[2] *Garner* is the most recent in the series of decisions by this Court declaring certain realms of labor relations policy to be within the field which was preempted by Congress through enactment of the National Labor Relations Act, as amended (49 Stat. 449, 61 Stat. 136, 29 U. S. C. 151, *et. seq.*) and thereby closed to state regulation. See: *LaCrosse Tel. Corp.* v. *Wis. Board*, 336 U. S. 18; *Plankinton Packing Co.* v. *Wisconsin Board*, 338 U. S. 953; *Automobile Workers* v. *O'Brien*, 339 U. S. 454; *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383; see also *Hill* v. *Florida*, 325 U. S. 538; *Bethlehem Co.* v. *State Board*, 330 U. S. 767; but cf. *Allen-Bradley Local* v. *Board*, 315 U. S. 740; *Auto. Workers* v. *Wis. Board*, 336 U. S. 245; *Algoma Plywood Co.* v. *Wis. Board*, 336 U. S. 301; *United Workers* v. *Laburnum Corp.*, 347 U. S. 656.

jurisdiction—petitioners deem it appropriate to demonstrate the validity of that assumption.[3]

Here, as in *Garner*, an employer initiated a state court action complaining of peaceful picketing.[4] And here, as in *Garner*, the relief sought was limited to an injunction against that picketing. In the instant action Richman complained that Amalgamated was engaged in a "conspiracy" to use "economic pressure . . . against plaintiff" to cause "plaintiff to force sufficient of its eligible employees to become members of defendant Amalgamated, so that defendant Amalgamated may become the representative of its such employees for the purpose of collective bargaining with plaintiff, regardless of the desires of a majority thereof" (R. 6). Thus, the motive allegedly underlying Amalgamated's picketing is identical with that attributed to the *Garner* pickets—"to coerce [the employers] into compelling or influencing their employees to join the union." *Garner* v. *Teamsters Union*, *supra*, at 487.

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[3] The Court of Appeals noted that a question of whether the state court lacked jurisdiction was "collaterally involved" in the instant case (211 F. 2nd at 450); the court by-passed the question by disposing of the case on the basis of Section 2283.

[4] The Court of Appeals, although noting a Richman "allegation of sporadic picketing demonstrations by as many as twenty pickets . . .", expressly found that "There is no suggestion in the Richman petition that violence or threats accompanied the union picketing." 211 F. 2nd at 451. The District Court in the removal proceeding (see p. 4, *supra*), found that, "There is no allegation of fraud or violence in connection with the picketing and it is not fairly to be inferred that the picketing is other than peaceful." 114 F. Supp. at 186. The allegation referred to, balanced against these concurrent findings that the picketing in question was not claimed to be other than peaceful, cannot rise to the dignity of activity which was subject to state power because it "threatened a probable breach of the state's peace or would call for extraordinary police measures by state or city authority." *Garner* v. *Teamsters Union*, 346 U. S. at 488.

This Court noted in *Garner* that Congress, in the National Labor Relations Act, "has forbidden labor unions to exert certain types of coercion on employees through the medium of the employer" (346 U. S. at 488-489). Thus, "Congress has taken in hand this particular type of controversy where it affects interstate commerce" (*Id.* at 488). Accordingly, this Court affirmed the conclusion of the Pennsylvania Supreme Court that the "grievance fell within the jurisdiction of the National Labor Relations Board to prevent unfair labor practices" (346 U. S. at 487). The Court took explicit occasion to note that "It is not necessary or appropriate for us to surmise how the National Labor Relations Board might have decided this controversy. . . . The power and duty of primary decision lies with the Board, not with us" (346 U. S. at 489). This Court concluded that Pennsylvania could not regulate the picketing no matter how the Board might have decided the controversy (346 U. S. at 499-500). "For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state were to declare picketing free for purposes or by methods which the federal Act prohibits" (346 U. S. at 506).[5]

[5] The Board might have found the picketing to be an unfair practice in violation of Section 8 (b) (2) of the Act (see *Garner* v. *Teamsters, C. & H. Loc. Union 776*, 373 Pa. 19, affirmed 346 U. S. 485), or an unfair practice in violation of Section 8(b)(1)(A) (see *Capital Service* v. *National Labor Relations Board*, 204 F. 2nd 848 (C. A. 9), affirmed 347 U. S. 501). The actual purpose of the picketing, however, was to further Amalgamated's campaign to "organize employees of Richman and . . . publicize the fact that Richman, among other employers, manufactures non-union clothing" (R. 17), see *supra*, p. 3. Thus, in petitioners' view, the picketing was to inform the consuming public and was entirely legitimate organizational activity affirmatively protected by Section 7. Compare the authoritative view of Senator Taft, who in commenting on the validity of a union

"On the basis of the allegations," the conduct challenged here, like that in *Garner*, could have been complained of "to the National Labor Relations Board. The [petitioners] were subject to being summoned before that body to justify their conduct. We think the grievance was not subject to litigation in the tribunals of the State" (346 U. S. at 501).[6]

With respect to the state court's lack of jurisdiction, *Garner* and the instant case are indistinguishable.

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appeal to "the general public not to buy products of non-union manufacturers" declared, "This is not forbidden by the act, since it is merely persuasion." 93 Cong. Rec. (1947) A3370. See also *Bakery Drivers Local Union No. 27 and Capital Service, Inc.*, 100 NLRB 1092. See Appendix, *infra*, pp. 44-45, for the texts of the sections of the Act referred to.

[6] The conclusion required by *Garner* is in no way altered by the fact that respondent's state court pleading, almost by way of afterthought, alternatively characterizes the alleged conspiracy by Amalgamated to coerce Richman to force union membership on its employees as an "unreasonable restraint of trade" within the meaning of Ohio's anti-trust statute, the Valentine Act (R. 9). The *Garner* rule does not turn on the label given the competing state pattern of regulation; the rule is concerned with substance—concretely, the supremacy under the Constitution of federal law. "To the extent that Congress prescribed preventive procedure against unfair labor practices, that case recognized that the Act excluded conflicting state procedure to the same end." *United Workers* v. *Laburnum Corp.*, 347 U. S. 656, 665. In short, the present Act, like the original Wagner Act, "'is paramount over other laws that might touch upon similar subject matters.'" *Amalgamated Workers* v. *Edison Co.*, 309 U. S. 261, 267, quoting from Sen. Rep. No. 573, 74th Cong., 1st Sess., page 15. See *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383, striking down, as in conflict with the Act, the Wisconsin statute providing for compulsory arbitration of strikes in public utilities; the state policies there held subordinate to the Act would seem far more substantial than those which might conceivably be invoked by Ohio courts to justify turning the clock back to a time when trade unionism was considered an unlawful conspiracy in restraint of trade. Cf. *Auto Workers* v. *Wis. Board*, 336 U. S. 245, 257-258. See generally, *Weber* v. *Anheuser-Busch*, No. 97, October Term, 1954, now pending before this Court, and particularly the briefs filed therein by the National Labor Relations Board and the Congress of Industrial Organizations as *amici curiae*.

The difference between the cases—a difference to which the remainder of this Brief is devoted—is that in the instant case, the unions aggrieved by state court usurpation of federal jurisdiction have sought to challenge that usurpation directly through invocation of federal equity power to protect federal authority. Petitioners believed that these federal rights required prompter vindication than that likely on appeal through tiers of state courts lacking jurisdiction to the discretionary salvation afforded by this Court's certiorari review. In large measure, petitioners' resort to the injunctive remedy discussed hereafter was necessitated by the gravity of the state court threat to petitioners' rights. In *Garner,* the state court enjoined the union from picketing one loading platform (346 U. S. at 486-487). Here, the employer sought—and the state court ultimately issued—*an injunction preventing Amalgamated from picketing 69 retail outlets in sixteen states.* In the face of the assertion by the Cuyahoga County Court of Common Pleas of power to supplant the National Labor Relations Board and the federal courts and declare its own uniform labor policy throughout one-third of the nation, Amalgamated sought immediate aid in the federal District Court.

B. The District Court Had Jurisdiction of Petitioners' Complaint.

Section 1337 of the Judicial Code confers on the federal district courts "original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce . . ." 28 U. S. C. 1337, 62 Stat. 931.

Paragraph 1 of petitioners' complaint specifically invokes the jurisdiction created by the foregoing language, and recites that the instant proceeding—to enjoin state invasion of federal rights embodied in the National Labor Relations Act and exclusively governed by the Board—is one which "arises under" the Act (R. 16). Inasmuch as the Act is one "regulating commerce" (*Capital Service Inc.* v. *Labor Board*, 347 U. S. 501, 504, citing *Labor Board* v. *Jones & Laughlin*, 301 U. S. 1), the instant proceeding arising under the Act would appear to fall within the quoted jurisdictional provision.

This literal conclusion is confirmed by two cases in this Court. In *A. F. of L.* v. *Watson*, 327 U. S. 582, decided in 1946 (when 28 U. S. C. 41(8), the predecessor of present Section 1337, was the applicable statute), various unions, employees and employers brought suit in a federal district court to enjoin the enforcement in the Florida courts of state statutes alleged to curtail the right to bargain for a "closed shop" secured to plaintiffs by the original National Labor Relations Act. "And since the right asserted is derived from or recognized by a federal law regulating commerce, a majority of the Court conclude that a suit to protect it against impairment by state action is a suit 'arising under' a federal law 'regulating commerce'" (327 U. S. at 591).

A. F. of L. v. *Watson* was found to sustain the district court's jurisdiction under Section 1337 in *Capital Service, Inc.* v. *Labor Board*, 347 U. S. 501, 504, decided last term. There this Court affirmed an injunction issued by the district court at the behest of the Board to stay enforcement of a state court

injunction against picketing which state court injunction conflicted with the exclusive procedures established by the Labor Relations Act.

Capital Service and *A. F. of L.* v. *Watson* illustrate the further point that district court jurisdiction to enjoin state invasion of the area preempted by the National Labor Relations Act in no way depends on whether the complainant is the Board or a private party. The cases in the lower courts are in accord. Thus, the Board was permitted to sue in *National Labor Rel. Bd.* v. *New York State Labor Rel. Bd.*, 106 F. Supp. 749 (S. D. N. Y.), and *National Labor Relations Board* v. *Industrial Com'n*, 84 F. Supp. 593 (D. Utah), affirmed 172 F. 2nd 389 (C. A. 10). An employer injured by state invasion of federal labor policy successfully maintained an injunctive action in *Linde Air Products Co.* v. *Johnson*, 77 F. Supp. 656 (D. Minn.). And unions whose federal statutory rights were jeopardized by state regulation secured injunctions in *Food, Tobacco, Agricultural and Allied Wkrs.* v. *Smiley*, 164 F. 2nd 922 (C. A. 3), and in *United Office and Professional Wkrs.* v. *Smiley*, 77 F. Supp. 659 (M. D. Pa.).

It is plain from the foregoing that the injunctive action brought by petitioners—whose federal rights were identical with those recognized and accorded legal protection in *Garner*—was within the jurisdiction of the District Court. For "where Congress, acting within its constitutional authority, has vested a federal agency with exclusive jurisdiction over a subject matter and the intrusion of a state would result in conflict of functions, the federal court may

enjoin the state proceeding in order to preserve the federal right." *Capital Service*, *supra*, at 504.[7]

C. Section 2283 Does Not Prevent the District Court from Enjoining the Invalid State Court Proceedings.

(1) *Introduction*

Petitioners submit that they have demonstrated, in the foregoing portions of this Brief, that the Cuyahoga County Court of Common Pleas was without jurisdiction of Richman's action and that the federal District Court had jurisdiction of the Amalgamated's proceeding brought to enjoin Richman's action.

The sole remaining question is the principal "question presented" in the instant case—whether the courts below were correct in their conclusion that the limitation on federal injunctions "to stay proceedings in a State court" embodied in Section 2283 of the Judicial Code (28 U. S. C. 2283, 62 Stat. 968), is so broad as to bar the district court, in the exercise of its equity jurisdiction, from granting the relief sought.

To conclude, as is required by the opinion below, that a district court is powerless to restrain pursuit

[7] The foregoing quotation from the *Capital Service* opinion is supported by the following citations (347 U. S. at 504-505): "See *Public Utilities Commission* v. *Gas Co.* 317 U. S. 456, 468-470; *Baules* v. *Willingham*, 321 U. S. 503, 510-511; Cf. *American Federation of Labor* v. *Watson*, *supra*, at 593-595." All of the three cited cases were suits in federal district courts to restrain state invasion of an exclusive federal domain; the second and third cases were, specifically, suits to enjoin state judicial proceedings; the first and third suits were initiated by private litigants.

of a state court injunction even where such injunction would be a clear invasion of the Congressionally declared exclusive domain of the federal Labor Board and the federal courts, leads to "deplorable" consequences, as Judge Frank has candidly characterized them. *International Union* v. *Underwood Corp.* (C. A. 2, No. 182, January 6, 1955) (not yet officially reported), page 279, n. 14. "For, if the state-court does grant such an injunction,[8] and if its order is fatally defective as exceeding the proper area of state jurisdiction but is affirmed by the highest state court, then, long before that order can be reversed by the United States Supreme Court, its practical effect may well be to break the strike by invalid means." *Id.* at 276.

The instant state court action, typical of the classic suit for a labor injunction, has borne fruit in a "temporary" injunction which has thus far halted Amalgamated's organizational picketing of Richman for almost two years—*and halted that picketing in one-third of the States of the United States.* Under Ohio practice, this injunction was not a final order and hence was not appealable to Ohio's intermediate and ultimate appellate courts.[9] But even had it been appealable under the state practice, it would still have

[8] It is to be recalled (*supra*, pp. 4-6) that in the instant case the state court did grant an injunction after denying the Amalgamated motion to dismiss for lack of state court jurisdiction over Richman's petition.

[9] The temporary injunction was not a final order within the meaning of Section 12223.2 of the General Code, and therefore not appealable pursuant to Section 12223.3. *May Co.* v. *Bailey Co.*, 81 Ohio St. 471; *Jones* v. *First Nat'l Bank*, 123 Ohio St. 642, 643-647; *Tegtow* v. *Randall Park Holding Co.*, 94 Ohio App. 505; *Lucas* v. *Kraft*, 93 Ohio App. 342. Revision of the General Code since the issuance of the temporary injunction has changed the section numbers of the cited code provisions to 2505.02 and 2505.03 respectively, but it does not appear to have changed their substance. See pages vii, 18 and 28 of the volume containing Titles 25 and 27 of Page's Ohio Revised Code Annotated (1954

lacked the finality required for review on certiorari in this Court because it was not denominated a "permanent" injunction. *Building Union* v. *Ledbetter Co.*, 344 U. S. 178. Nor could Amalgamated have flouted the injunction in calculated reliance on the proposition that the Court of Common Pleas was without jurisdiction: courts lacking jurisdiction can cite for contempt those who violate their invalid decrees. *United States* v. *Mine Workers*, 330 U. S. 258, 293-295.

Unions suffering under invalid state court restraint will find that as a practical matter mere lapse of time will render useless the ultimate appellate remedy in this Court theoretically made available by the *Garner* decision. By the time the Garner path has been traversed, the membership of a union invalidly enjoined by state court action from striking and picketing for higher wages and better working conditions will long since have resigned themselves to accepting far less than desired and, more importantly, far less than their economic strength, which under federal law they are permitted concertedly to exert, could have secured. By the time the *Garner* path has been traversed, employees seeking to join together with their fellow employees in order to enjoy the status of collective bargaining, and striking and picketing to this end, will, under the restraint of an invalid state court injunction, long since have given up the unequal struggle. In truth, the state court injunction—temporary or permanent—speaks with an air of finality. Realistically viewed it is the terminal point of the ligitation, the end of the economic struggle by workingmen for collective bargaining status or higher standards. The guarantees and prescriptions of the federal labor act are irretrievably lost.

The prompt equitable relief sought in the instant action is the only effective answer to state court usurpation of the federal field. The needs were succinctly stated in the brief filed in this Court in *Capital Service* by the National Labor Relations Board; emphasizing the added importance of district court injunctive relief in the light of this Court's decision in *Ledbetter, supra,* the Board said (p. 25 n. 12):

> Under this holding, it would appear that, if a state court preliminary injunction which invaded an exclusive federal jurisdiction were ever to be reviewed by this Court, this could only be achieved by means of the procedure utilized herein, i. e., an independent equity suit in the federal district court.

For when the disputants in a labor controversy resort to court, "The preliminary proceedings . . . make the issue of final relief a practical nullity . . . [I]mprovident issue of the injunction may be irreparable. . . ." Frankfurter and Greene, *The Labor Injunction* (1930) 200-201.

Nor is it any answer to urge that these deplorable consequences need not come about since the the Board, through injunctive proceedings like that upheld in *Capital Service Inc.* v. *Labor Board, supra,* can protect its jurisdiction and the federal rights of unions and union members. *Capital Service* was a unique case, made possible only because the employer there initiated a state court action *and* filed charges with the Board. It was because of the charges filed with it that the Board was enabled to issue its complaint of unfair practice and, in support thereof, sought federal injunctions both against the alleged unfair practice

and against enforcement of the competing state court decree. The affirmance in *Capital Service* of the district court stay of the state court proceedings is salutary; but it may be confidently anticipated that employers will hereafter largely confine their attempts to restrain picketing to the state courts and thereby avoid the possibility of Board interference with invalid state court decrees.

The Court of Appeals for the Second Circuit, in *International Union* v. *Underwood Corp., supra*, assumed that the Board could initiate district court proceedings of the kind here sought to be sustained without awaiting the filing of charges. As indicated *infra*, pp. 39-41, there is no logical basis for concluding that the Board could bring such an independent action but that the union injured by the state court could not. Whether the Board could bring such an independent action, however, is academic: it need not do so and it seems to lack the resources to do so. See *id.* at page 277. The fact is that the National Labor Relations Board is not set up to take prompt and effective steps to vindicate the federal regulatory authority in the innumerable state court cases which result or might result in trespass upon that authority. The Board does not have the staff or the means to engage in a task of such dimensions. See pp. 46-47 of Respondent's Brief in *Garner*. This is but another instance where preservation of the broad public interest can only be achieved through numerous private litigants alert to the danger to their personal rights and quick to act in their defense. In permitting private persons with a direct personal interest to fend off encroachments upon the exclusive federal domain through resort to the federal courts, federal courts

can ensure that the federal domain receives the protection which the regulatory agency, the Board in this instance, is incapable of giving.

In short, if the decision in the instant case is affirmed, the protection thrown about the federal field in *Garner* and *Capital Service* will have been largely destroyed because state court proceedings trespassing on preempted fields would in the vast bulk of cases be beyond effective challenge from any quarter. If this Court upholds the court below in the instant case, this decision and *Capital Service* would, taken together, have the ironic effect of channeling a vast amount of complex litigation interpreting the National Labor Relations Act into state courts which have neither expertise nor jurisdiction. For this is not a situation in which both the state and federal courts are equally competent to pass upon the jurisdictional issue. The answer to whether or not there is jurisdiction in the state court requires, of necessity, subtle interpretation of the National Labor Relations Act. Aside from the Board, it is only in the federal courts, which have a definitive place in the statutory scheme, that tribunals are found with either sufficient experience or knowledge to pass upon the intricate subsidiary questions of statutory construction involved in the ultimate jurisdictional determination.

Finally, if, contrary to petitioners' surmise, a substantial number of cases were to survive through the hierarchies of state courts until vindication of the federal right, it would only be because this Court—the single knowledgeable tribunal in that appellate path—utilized its discretionary writ of certiorari with substantial frequency for the unintended purpose of examining discrepant fact situations rather than for

resolving legal questions of broad applicability. The Congressional purpose—primary adjudication by the Board and auxiliary adjudication by the federal district courts and courts of appeal—would be effectively frustrated.

Uniform administration of a national policy of labor relations by a single expert tribunal, supported by a federal judiciary thoroughly versed in and expressly part of the Congressional plan, would give way to a hodge-podge of conflicting and uninformed determinations by state judges whose best intentions could supply neither familiarity with the subject matter nor jurisdiction over it.[10] The occasions on which this Court would be impelled to exercise some supervisory restraint would act not so much to stem the flow of error as simply to clog this Court's docket with cases which should have been tried and determined by the National Labor Relations Board in the first instance.

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[10] See, e. g., *Satin, Inc.* v. *Local Union 445, IBEW*, 26 Labor Cases Par. 68,508 (Mich. Cir. Ct., 1954). There the Circuit Court for Calhoun County, Michigan, enjoined picketing found to be for the purpose (violative of Michigan public policy) of coercing employees, directly and through the medium of the employer, into joining the defendant union. *Garner* was distinguished on numerous grounds, among which was the following (26 Labor Cases, Par. 68,508, at pp. 86,693-86,694):

> The *Garner* case is clearly distinguishable from the case at bar. The U. S. Supreme Court in denying certiorari in [*Way Baking Co. v. Teamsters*, 335 Mich. 478, cert. denied, 345 U. S. 957] by implication at least, recognized this difference. This Court has jurisdiction to use its equity powers to prevent the declared policy of this State from being frustrated and held for naught. To do so does not violate the *Garner* case where no such policy was involved, nor does it infringe upon the rights of Congress under the Interstate Commerce clause, because Congress has evinced no desire to substitute its judgment for the judgment of the State Legislature, and has, in reality, specifically recognized the right of a state to stop forcible unionization.

Nor does Section 2283 of the Judicial Code, the limitation on federal equity power relied on by the court below, require the conclusion—and the "deplorable" consequences to petitioners and to the public interest which flow from that conclusion—that the District Court was powerless to restrain pursuit of the Ohio court's trespass on the federal domain.

Section 2283 provides as follows:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

It is the most recent version of statutory language[11] which has been "a limitation of the power of the federal courts dating almost from the beginning of our history and expressing an important Congressional policy—to prevent needless friction between state and federal courts". *Oklahoma Packing Co.* v. *Gas Co.*, 309 U. S. 4, 8-9.[12]

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[11] The present language appeared in the 1948 revision of the Judicial Code. Theretofore the relevant proviso was the more broadly worded prohibition embodied in former Section 265 of the Judicial Code (former 28 U. S. C. 379) which read as follows:

> The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.

This language had been carried over unchanged in the 1911 Judicial Code from Section 720 of the Revised Statutes of 1874, which in turn derived from Section 5 of the Act of March 2, 1793: ". . . nor shall a writ of injunction be granted to stay proceedings in any court of a State . . ." 1 Stat. 333, 334.

[12] See, generally, Barrett, *Federal Injunctions Against Proceedings in State Courts*, 35 Calif. L. Rev. 545 (1947); Taylor and Willis, *The Power of Federal Courts to Enjoin Proceedings*

"Section 2283 . . . does not go to the jurisdiction of a federal court, but is an affirmation of the rules of comity . . ." Moore's *Commentary on the U. S. Judicial Code* (1949) 407. That the statute is not jurisdictional was made plain by this Court in *Smith* v. *Apple*, 264 U. S. 274, 278-280, in discussing former Section 265 of the Judicial Code, Section 2283's more broadly worded predecessor:[13]

> It is not a jurisdictional statute. It neither confers jurisdiction upon the district courts nor takes away the jurisdiction otherwise specifically conferred upon them by the fereral statutes . . . Where the plaintiff has the undoubted right to invoke its federal jurisdiction the court is bound to take the case and proceed to judgment . . . And when the court takes jurisdiction and determines that in the light of §265 of the Code it is either authorized or prevented from granting the injunction prayed, its decision . . . is plainly not a decision upon a jurisdictional issue but upon the question whether there is or is not equity in the particular bill; that is, a decision going to the merits of the controversy.

This construction of Section 265 was expressly reaffirmed in *Woodmen of The World* v. *O'Neill*, 266 U. S. 292, 298.[14]

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in State Courts, 42 Yale L. J. 1169 (1933); Durfee and Sloss, *Federal Injunction Against Proceedings in State Courts: The Life History of a Statute*, 30 Mich. L. Rev. 1145 (1932); Warren, *Federal and State Court Interference*, 43 Harv. L. Rev. 345 (1930); Note, 52 Yale L. J. 150 (1942); Note, 48 Northwestern U. L. Rev. 383 (1953).

[13] See note 11, *supra*.

[14] See also the observation by Mr. Justice Reed in the dissenting opinion in *Toucey* v. *New York Life Ins. Co.*, 314 U. S. 118, 141

(2) *Section 2283 applies only where state and federal courts have concurrent jurisdiction, and hence it is inapplicable here*

Because Section 265 was always recognized to be "a rule of comity and like that rule is limited in its field of operation", *Wells Fargo & Co.* v. *Taylor*, 254 U. S. 175, 183, it was always plainly understood that the proviso, "as settled by repeated decisions of this Court, does not prohibit in all cases injunctions staying proceedings in a state court. Such injunctions may be granted, consistently with its provisions, in several classes of cases". *Smith* v. *Apple*, *supra*, at page 279. Under the broad language of Section 265 there was in the past substantial controversy with respect to certain apparent exceptions.[15] There has

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(an opinion expressly endorsed by the revisers who drafted Section 2283 (H. Rep. No. 308, 80th Cong., 1st Sess., A182, quoted in the Appendix, *infra*, pp. 49-50)), that "§265 is recognized as merely a limitation on general equity powers . . . while the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. §101, is a denial of jurisdiction to enjoin" (314 U. S. at 154 n. 24). There are intimations in the opinion below that Section 2283 was regarded by the court as a jurisdictional limitation, and the Court of Appeals for the Second Circuit, in *International Union* v. *Underwood Corp.* (No. 182, January 6, 1955), ordered a dismissal "for lack of jurisdiction" in reliance on Section 2283. As *Smith* v. *Apple* and the other cited references make plain, however, there is no basis for any such construction of the statute.

[15] Until 1941, when this court decided *Toucey* v. *New York Life Ins. Co.*, 314 U. S. 118, (see note 16, *infra*) there were several judicially recognized exceptions to the statute. It was understood that Section 265 did not prevent federal courts from restraining state judicial interference with a *res* in the custody of the federal courts. See, e. g., *Oklahoma* v. *Texas*, 265 U. S. 490; *Kline* v. *Burke Constr. Co.*, 260 U. S. 226, 235. Federal courts were thought to be free to enjoin the relitigation of cases determined by them. *Gunter* v. *Atlantic Coast Line*, 200 U. S. 273, 292; *Julian* v. *Central Trust Co.*, 193 U. S. 93, 112-114. And it

never, however, been any question that this rule of comity, given its broadest sweep, was designed to accommodate—and hence was only applicable to—"two systems of courts having potential jurisdiction over the same subject-matter". *Hale* v. *Bimco Trading Co.*, 306 U. S. 375, 378. In short, the rule, and the statute which embodied it, were plainly without application where, as here, the state courts are wholly without "jurisdiction over . . . the subject-matter".

The inapplicability of Section 265 to cases where the state court lacked "jurisdiction over the . . . subject-matter" was plainly demonstrated by this Court's decision in *Bowles* v. *Willingham*, 321 U. S. 503. The Court was there construing Section 265, and was construing it in the light of its then recent decision in *Toucey* v. *New York Life Ins. Co.*, 314 U. S. 118, which repudiated certain earlier impairments of the statute and enforced it with renewed vigor in the fields to which it was applicable.[16]

The question in *Bowles* v. *Willingham* was whether a federal court, at the instance of the Administrator

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was understood that, notwithstanding Section 265, federal courts could enjoin enforcement of state court judgments which were fraudulently obtained. See *Wells Fargo & Co.* v. *Taylor*, 254 U. S. 175; cf. *Marshall* v. *Holmes*, 141 U. S. 589. In addition, Section 265 did not operate to limit the power of federal courts to enjoin further state proceedings in a removed action (see *Traction Co.* v. *Mining Company*, 196 U. S. 239, 245) nor did it interfere with other statutory provisions expressly or impliicitly sanctioning restraints upon conflicting state actions in particular situations (e. g., Interpleader Act of 1926, 44 Stat. 416, amending 39 Stat. 929; Act of 1851, limiting shipowners' liability, 9 Stat. 635, 636; see pp. 34-35, *infra*).

[16] In *Toucey* v. *New York Life Ins. Co.*, *supra*, preexisting interpretations of Section 265 were reexamined. Giving to the language of the statute a more nearly literal breadth, this Court expressly repudiated the so-called "relitigation" exception to

of OPA, had power to enjoin enforcement of a state court decree enjoining the Administrator from issuing certain allegedly invalid price orders. This Court, noting that Congress had created a special tribunal (the Emergency Court of Appeals) to which it had confided exclusive jurisdiction over challenges to the validity of rent orders, squarely held (321 U. S. at 511):

> Congress thus preempted jurisdiction in favor of the Emergency Court to the exclusion of state courts. The rule expressed in §265 which is designed to avoid collisions between state and federal authorities (*Toucey* v. *New York Life Ins. Co., supra*) thus does not come into play.[17]

Four years after *Bowles* v. *Willingham*, Section 265 was replaced by the present rule, Section 2283. Comparing the wording of the two provisos, it is evident that Congress intended to assure for the future a less inclusive ban on federal injunctions against state courts. This is confirmed by the Reviser's Notes on the new section, which comprise the entire formal legislative history. Specifically, the Notes disclose, "the revised section restores the basic law as generally understood and interpreted prior to the Toucy [*sic*] decision". H. Rep. No. 308, 80th Cong., 1st

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Section 265 and indicated serious doubt as to the validity of the cases enjoining the enforcement of fraudulently obtained state court judgments.

[17] There was another ground for the *Bowles* v. *Willingham* decision—a finding that Section 205(a) of the Price Control Act authorizing suits to enjoin violations was an implied amendment to Section 265; see *infra*, page 35. But that the quoted holding was an independent ground of decision has been confirmed by this Court. *Porter* v. *Dicken*, 328 U. S. 252, 255 n. 1; see Barrett, *op. cit. supra*, note 12, at 561-562; Hart and Wechsler, *The Federal Courts and the Federal System* (1953) 1076.

Sess., A181-A182. (See Appendix, *infra*, pp. 49-50, for full text of Reviser's Notes.) Section 2283 has thus shrunk the statutory limitation on district court equity power to, at least, its pre-*Toucey* dimensions. In any event, it is plain that Section 2283 was not intended to operate as a legislative reversal of the *Bowles* v. *Willingham* construction of the predecessor law.

The instant case is a case like *Bowles* v. *Willingham*—a case in which a federal district court was called upon, in the exercise of its equity jurisdiction, to enjoin state court usurpation of powers exclusively reserved to a federal tribunal. *Bowles* v. *Willingham* made it plain that even under *Toucey*, which accorded the ban on federal injunctions against state judicial proceedings the broadest scope it has ever enjoyed, the statute was without application when the state court was without jurisdiction.

Accordingly, where, as here, "Congress thus preempted jurisdiction . . . to the exclusion of state courts," the statute "does not come into play" (321 U. S. at 511).

The rationale of the statute and the rationale of its limited scope are equally plain. The statute "is intended to give effect to a familiar rule of comity and like that rule is limited in its field of operation. Within that field it tends to prevent unseemly interference with the orderly disposal of litigation in the state courts and is salutary; but to carry it beyond that field would materially hamper the federal courts in the discharge of duties otherwise plainly cast upon them by the Constitution and the laws of Congress.

which of course is not contemplated". *Wells Fargo & Co.* v. *Taylor, supra*, at 183.

In conclusion, in order that the limited scope of our argument be fully understood, these general observations are set forth. The foregoing contentions and supporting arguments and cases recognize the fact that potentiality of conflict inheres in our federal system of parallel courts and that measures must be taken and rules designed to reduce, if not avoid, such incidence of collision. When two separate governments shape the lives of a citizenry common to both, when separate and independent courts pass on questions concerning their liberty and their property, there is clearly a need for regulatory devices such as Section 2283.

This rule has, by virtue of flexible interpretation and accommodation,[18] served as a means of reducing conflict between these parallel systems of courts in those areas in which they share power.

But where there is no such overlap of jurisdiction, no concurrent power, there is then no real basis for collision which the federal courts should recognize

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[18] Cf. Taylor and Willis, *op. cit. supra*, note 12, at 1196:

> The very nature of the problem is such that to lay down a rigid rule governing the right of a federal court to decline to exercise jurisdiction in deference to a state court is neither practicable nor desirable. Necessarily, much must be left to depend upon whether or not the facts of a particular case present a situation in which to take jurisdiction would be to interrupt the harmonious concurrent activity of federal and state tribunals which the principles of comity are designed to promote, or would be to run counter to the policy of non-interference which the successful maintenance of a dual system of courts requires.

under principles of comity. If there is a collision between federal and state governments because of a state court's trespass upon the federal domain—the domain of the supreme sovereign and the exclusive sovereign when it chooses to exercise its constitutional powers—the unseemly conduct is to be found in the state court's action, the unseemly conflict is engendered by the state court's disregard of the federal scheme. The federal system is endangered by the action of the state court and not by the counteraction of the federal court. In short, the same considerations which require exercise of self restraint upon the part of our federal system of courts *vis-à-vis* state courts also require that the same federal courts be possessed of sufficient powers to act when our state courts, either through ignorance or irresponsibility, choose to challenge the rule of federal supremacy in those areas constitutionally allotted.

In short, petitioners submit that the logic of the statute and the cases construing it require the conclusion that it is wholly without application in a case, like the instant one, where federal jurisdiction is exclusive.

(3) *In any event, the instant case falls within express exceptions to Section 2283*

But even if Section 2283 were held to have general application to cases of this kind, the instant case would fall within either the first or the second express exception to the statute—permitting the district court to exercise its full equity power "as expressly authorized by Act of Congress" or "where necessary in aid of its jurisdiction." For the National Labor Rela-

tions Act, as Professor Moore has observed, is one of the "[e]xamples of statutory authorization, which are either sufficiently express to come within the first exception to §2283 or sufficiently clear to operate within the second exception, even within the rationale of the *Toucey* case." *Commentary on the U. S. Judicial Code* (1949) 410 and *ibid.* at n. 65.

(a) *First Exception*

Hastily considered, the first exception to Section 2283, permitting injunctions "as expressly authorized by Act of Congress," appears to refer to statutory authority which *in haec verba* provides for the issuance of decrees restraining state court proceedings. But the history of the phrase forecloses any such literal rendition.

The phrase is designed to cover what Professors Hart and Wechsler refer to as the "'statutory' exceptions" to the limitation on the district court's power to enjoin state court proceedings. Hart and Wechsler, *The Federal Courts and the Federal System* (1953) 1076. These statutory exceptions are the ones summarized in the *Toucey* opinion (see note 16, *supra*) plus others acknowledged thereafter. In *Toucey*, the Court first adverted to "the only legislative exception . . . incorporated directly into §265: ' . . . except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy' " (314 U. S. at 132), and then noted four other "statutory qualifications" of Section 265—the Removal Acts; the statutes limiting shipowners' liability; the Interpleader Act of 1926; and the Frazier-Lemke Act. Since *Toucey*, this Court has stated that, "There should now be added to that list the exception created by the Emergency Price Control Act of 1942."

Bowles v. *Willingham*, *supra*, at 540; see note 17, *supra*; see *Fleming* v. *Rhodes*, 331 U. S. 100; *Porter* v. *Dicken*, 328 U. S. 252; *Porter* v. *Lee*, 328 U. S. 246. And the Court of Appeals for the Ninth Circuit found power to enjoin state court proceedings infringing on the exclusive federal jurisdiction created by the National Labor Relations Act "implicit in the terms of the law." *National Labor Relations Bd.* v. *Sunshine Mining Co.*, 5 F. 2nd 757, 762 (C. A. 9); cf. *National Labor Relations Bd.* v. *Underwood Mach. Co.*, 198 F. 2nd 93, 95 (C. A. 1). See Sections 10(a), (e), (f), (j) and (l) of the Act (Appendix, *infra*, pp. 45-49).

Of all these recognized "statutory qualifications" of Section 265, only the Interpleader Act was *explicit*, authorizing district courts "to issue an order of injunction against each of [the claimants], enjoining them from instituting or prosecuting any suit or proceeding in any State court. . . ." 44 Stat. 416, amending 39 Stat. 929. All the other "statutory qualifications" can operate by implication only.

Does this mean that the implied qualifications have been eliminated by the phrase "as expressly authorized by Act of Congress"? Does such a result square with the Reviser's explanation: "An exception as to Acts of Congress relating to bankruptcy was omitted and the general exception substituted to cover all exceptions" (H. Rep. No. 308, 80th Cong., 1st Sess., A181; see Appendix, *infra*, p. 49)?

"What *does* 'expressly authorized' mean? 'Authorizing in so many words an injunction against state court proceedings'? If so, do any of the statutory exceptions mentioned by Justice Frankfurter [in *Toucey*] survive, except the interpleader excep-

tion? But what of the bankruptcy exception, which is 'expressly' mentioned in the Reviser's notes but is not 'expressly authorized' in the Bankruptcy Act . . . ?" Hart and Wechsler, *op. cit. supra*, at 1076.

The questions propounded lead to but one answer. The phrase "except as expressly authorized by Act of Congress" preserves all the "statutory qualifications" recognized in *Toucey* and the subsequent cases. "This first exception made by §2283 represents no change in the prior law." Moore's *Commentary on the U. S. Judicial Code* (1949) 410. The "statutory qualifications" referred to above make it plain that any statute creating, as did these statutes, a pattern of federal regulation in which, by necessary implication, state intervention cannot be tolerated, is one in which Congress has "expressly authorized" an injunction against state court proceedings. Cf. *Cooper* v. *Hutchinson*, 184 F. 2nd 119, 124 (C. A. 3) (Civil Rights Act "suit in equity" a statutory exception to §2283).

A contrary construction—one which confined the exception to its literal signification—would lead to results completely antithetic to the declared legislative purpose. Such a construction would illustrate the wisdom of Judge Learned Hand's remark, in interpreting another statute: "There is no surer way to misread any document than to read it literally . . ." *Guiseppi* v. *Walling*, 144 F. 2nd 608, 624 (C. A. 3) (concurring opinion).

(b) *Second Exception*

The instant case also falls within the second exception to Section 2283, which permits a district court to enjoin state court proceedings "where necessary in

aid of its jurisdiction". *See Capital Service, Inc.* v. *Labor Board, supra*, upholding on this ground an injunction issued at the request of the Board.

Here, the injunction sought by Richman in the Ohio court—an injunction which did issue—would negate any recourse to the National Labor Relations Board and to the district court jurisdiction conferred by Section 10(j) of the Act to grant interim relief pending Board disposition of an unfair practice complaint. To prevent frustration of its potential jurisdiction would seem a proper object of a district court sitting in equity and exercising its power to act "in aid of its jurisdiction".

Moreover, the decree issued by the district court under such circumstances would of course be "in aid of [the] jurisdiction" of the Board as well as that of the court. The "jurisdiction" which federal courts can protect consistently with Section 2283 has been interpreted to comprehend the federal jurisdiction generally. Thus, Judge Bondy pointed out in *National Labor Rel. Bd.* v. *New York State Labor Rel. Bd.*, 106 F. Supp. 749, 752 (S. D. N. Y.), that Section 2283 "does not prevent the federal courts from restraining interference by the state courts with jurisdiction vested exclusively in the federal courts . . . or in a federal agency".

Notwithstanding the contrary view expressed by the court below, it would seem plain that a district court vindicating the jurisdiction of the Board and the court need not await the active invocation of that jurisdiction. In *International Union* v. *Underwood Corp.* (C. A. 2, No. 182, January 6, 1955) (not yet

officially reported), the Court of Appeals for the Second Circuit made it plain that there was no reason in logic or in the language of Section 2283 why a district court could not restrain state court proceedings prior to the filing of charges—*i. e.*, "where necessary in aid of its [potential] jurisdiction". The court relied upon the persuasive analogy of the power of a federal court of appeals to mandamus a district court to hear a proper case "so that the power of review may not be defeated". *Schwab* v. *Coleman*, 145 F. 2nd 672, 678 (C. A. 4). Exercise by the appellate court of the extraordinary writ, correcting a non-appealable order which if unremedied would deprive the appellate court of the possibility of exercising its potential appellate jurisdiction, is authorized under Section 1651(a) of the Judicial Code which grants federal courts power to issue appropriate writs "in aid of their respective jurisdictions . . ." 28 U. S. C. 1651(a). See *In re Josephson* (C. A. 1, No. 4854 Original, December 23, 1954) (not yet officially reported) pp. 4-13. So here, restraint of the state proceeding by the district court would be "in aid of its jurisdiction" within the meaning of Section 2283.

(4) *The Amalgamated had standing to sue in the District Court*

The court below indicated in its discussion of the second exception to the statute ("in aid of jurisdiction"), that a private party had no standing to secure injunctive relief from state court invasion of exclusive federal jurisdiction.[19] The Court of Appeals for

[19] The court below did not explicitly pass upon or discuss the basic contention of Amalgamated that Section 2283 comes into play only in situations where both state and federal courts have concurrent jurisdiction.

the Second Circuit in *International Union* v. *Underwood Corp., supra*, in discussing the "in aid of jurisdiction" exception to Section 2283, also stated that a private party, as distinguished from the Board, had no "standing". There are these complete answers to this asserted distinction:

First: Section 2283 makes no distinction between actions brought by private litigants and those brought by the Board or any other governmental agency. Neither the general applicability of the statute, nor the scope of its express exceptions, depends upon the identity of the complainant seeking injunctive relief.

Second: The cases discussed under Point B of this Brief are square authority for the standing of unions and other private litigants to bring actions to enjoin invasion by state courts and agencies of the domain exclusively preempted by the National Labor Relations Act. See *A. F. of L.* v. *Watson, supra; Food, Tobacco, Agricultural and Allied Wkrs.* v. *Smiley, supra; United Office and Professional Wkrs.* v. *Smiley, supra; Linde Air Products Co.* v. *Johnson, supra.*

Third: Garner makes it plain that the very deprivation of federal rights here suffered by petitioners is entitled to judicial cognizance and vindication *at the union's behest.*

It would be difficult to rationalize the conclusion that although the complaining union has standing in a *federal court* to complain about a state administrative tribunal's invasion of exclusive federal jurisdiction, and although it has standing in a *state*

court to challenge that court's trespass on the federal domain, it nevertheless has no standing in a *federal court* to complain of such invasion by a *state court*. The cases cited above show that there is no basis for such a conclusion.[20] And the language of Section 2283 makes it plain that the identity of the complainant has no bearing on the applicability of that statute.

This is as it should be. For if, "in a specified case the people have thought proper to bestow certain

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[20] Petitioners do not suggest that whether relief is sought by a federal agency or by a private litigant might not be properly regarded as a relevant factor by a district court weighing the equities in a particular case. Normally, it may be assumed, the act of a private litigant in seeking to restrain state invasion of the federal domain points up the consequent injury to personal rights and the irreparable nature of that injury; institution of a similar suit by a federal agency underscores the threat to the public interest generally. But such considerations are not pertinent to the question presented in the instant case. The courts below confined their decision to the proposition that district courts are without *power* to grant the requested relief. In this posture of the case, considerations relevant to the equities of the instant case were ignored.

In other cases, other equitable considerations might be regarded as relevant. In a case where, for example, the invasion of the federally preempted field was, unlike that in the instant case, peripheral—where there was substantial doubt as to whether there was exclusive jurisdiction in the federal Board and the federal courts—a district court might conclude not to enjoin the state court proceeding. What is important here, however, is that these interlaced questions of statutory interpretation and equitable discretion are precisely questions which the district courts—far better acquainted than their state counterparts with the complexities of the National Labor Relations Act—are well equipped to resolve. And in the unlikely event of too hasty district court intervention, the federal courts of appeal, whose established statutory role has made them fully familiar with the federal Act, can exercise prompt and effective supervision which the ordinary state practice cannot duplicate. Compare, for example the swift course of review in *International Union* v. *Underwood Corp.*, *supra*, (related *id.* at p. 271) with the unavailability, under the Ohio practice, of appellate review of the injunction granted in Richman's state court action (see note 9, *supra*).

powers on Congress, as the safest depository of them, and Congress has legislated within the scope of them, the people have reason to complain, that the same powers shall be exercised at the same time by the state . . ." *Houston* v. *Moore*, 5 Wheat. 1, 23.

Amalgamated seeks recognition by this Court that the District Court for the Northern District of Ohio has power to protect valuable rights of Amalgamated and its hundreds of thousands of members arising under the National Labor Relations Act. For if it be determined that the picketing complained of by Richman was concerted activity guaranteed by Section 7 of the Act, the intrusion of the state court plainly threatened—and in the instant case actually resulted in—irreparable loss of most substantial rights. Moreover, the determination as to whether Amalgamated's activity was so protected can only be made, in the first instance, by the National Labor Relations Board, the agency exclusively authorized by Congress to make such a determination, and the Amalgamated had a right to have the agency make such a determination.

If, on the other hand, the picketing complained of was such as to give rise to an unfair labor practice charge, Amalgamated had a right to controvert such a charge and to secure an informed adjudication in accordance with the exclusive practices and procedures prescribed in the National Labor Relations Act; a right to have the subject of such unfair practice charge investigated, heard and determined by the expert agency set up for such purpose; and, finally, if unfair practice were found, a right to have such finding and purported remedy reviewed as to substantiality of support for the finding and tested as

to appropriateness and scope of the remedy by those courts designated by Congress as the sole appellate tribunals in the statutory framework. The Amalgamated was entitled to be heard in accordance with the carefully designed procedures and practices established by Congress in the National Labor Relations Act.

The threatened loss of its federal rights at the hands of a state court which refused to recognize them gave Amalgamated standing to complain to the federal District Court and gave to that court power, which it should have exercised, to grant appropriate injunctive relief.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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January 25, 1955

APPENDIX

TITLE 28, U. S. CODE

SEC. 1337. COMMERCE AND ANTITRUST REGULATIONS.

The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies.

SEC. 1651. WRITS.

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

SEC. 2283. STAY OF STATE COURT PROCEEDINGS.

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

Section 265 of the Judicial Code of 1911, 36 Stat. 1162, 28 U. S. C. 379 (1940 ed.), provided:

> The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy

The relevant provisions of the National Labor Relations Act, as amended (49 Stat. 449, 61 Stat. 136, 29 U. S. C. Supp. V, 151 *et. seq.*), are as follows:

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

SEC. 8. * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: * * *

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3). * * *

Subsection (a) (3) of Section 8 relates to:

discrimination in regard to hire or tenure of employment or any term or condition of em-

ployment to encourage or discourage membership in any labor organization.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

* * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts busi-

ness, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * * The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides

or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the

filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further*, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be

unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further*, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D).

The Reviser's Notes on Section 2283 (H. Rep. No. 308, 80th Cong., 1st Sess., A181-A182):

> An exception as to Acts of Congress relating to bankruptcy was omitted and the general exception substituted to cover all exceptions.
>
> The phrase "in aid of its jurisdiction" was added to conform to section 1651 of this title and to make clear the recognized power of the Federal courts to stay proceedings in State cases removed to the district courts.
>
> The exceptions specifically include the words "to protect or effectuate its judgments," for lack

of which the Supreme Court held that the Federal courts are without power to enjoin relitigation of cases and controversies fully adjudicated by such courts. (See *Toucey* v. *New York Life Insurance Co.*, 62 S. Ct. 139, 314 U. S. 118, 86 L. Ed. 100. A vigorous dissenting opinion (62 S. Ct. 148) notes that at the time of the 1911 revision of the Judicial Code, the power of the courts of the United States to protect their judgments was unquestioned and that the revisers of that code noted no change and Congress intended no change.)

Therefore the revised section restores the basic law as generally understood and interpreted prior to the Touey [*sic*] decision.

Changes were made in phraseology.